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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

AMERICAN CONTRACTORS
INDEMNITY,

Plaintiff and Respondent,

v.

JOE MOODY,

Defendant and Appellant.

E060477

(Super.Ct.No. RIC1216310)

OPINION

APPEAL from the Superior Court of Riverside County. Richard J. Oberholzer,
Judge. Affirmed.

Joe Moody, in pro. per., and for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and Appellant Joe Moody filed a notice of appeal on January 23, 2014, from the order granting a summary judgment motion filed by Plaintiff and Respondent American Contractors Indemnity Company (ACIC).¹

Moody's opening brief is indecipherable. Moody refers to another appeal pending in this court in case Number E059515, which involves a special motion to strike Moody's cross-complaint filed against ACIC's attorneys, Lanak and Hanna, P.C. (Lanak) (SLAPP² motion) pursuant to Code of Civil Procedure section 425.16.³ However, Moody filed the instant appeal only from the grant of ACIC's motion for summary judgment and we will not consider any issues pertaining to the SLAPP motion. As for the summary judgment motion filed by ACIC, Moody has failed to provide an adequate record on appeal to support that the motion was improperly granted. We uphold the trial court's order granting the summary judgment motion.

¹ ACIC has not filed a response in this case.

² SLAPP is an acronym for "strategic lawsuit against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57.)

³ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

I

FACTUAL AND PROCEDURAL BACKGROUND

The procedural background and facts are drawn from what we can discern from the few records that Moody has provided and the dockets from the trial court and this court.

ACIC filed a complaint against Moody on May 23, 2012. It alleged two causes of action for breach of contract and common counts. ACIC stated that it was a surety company. ACIC alleged that on September 6, 2007, Moody executed a Lost Note/Deed Application (application) and Indemnity Agreement (agreement) in favor of ACIC for a deed that was lost for property owned by Moody. The agreement stated that in consideration of the issuance of the bond, Moody was to indemnify ACIC and hold it harmless against all loss, liability, costs and expenses of whatever kind or nature. In accordance with this agreement, ACIC issued a bond for the lost deed.

According to the complaint, on February 6, 2009, a lawsuit was filed against Moody in connection with a foreclosure involving the lost deed. ACIC, as the surety, was required to comply with its obligations under the bond to defend Moody against active litigation. ACIC prevailed in the lawsuit on June 15, 2010, but Moody owed them \$59,528.72 for representing him as set forth in the language of the agreement. Moody refused to pay the fees and the complaint was filed. ACIC sought \$59,528.72 in damages plus interest, attorneys' fees and costs.

Moody filed a cross-complaint against ACIC, which was later dismissed by the trial court. Although not made part of the record, according to the trial court docket, ACIC filed a motion for summary judgment on August 30, 2013. On November 19, 2013, the motion for summary judgment was granted by the trial court. The trial court docket provides that Moody was not present and did not file opposition. The judgment was signed on December 2, 2013, and notice of entry was filed on January 7, 2014. The judgment in favor of ACIC was in the amount of \$58,479.17 plus interest in the amount of \$23,365.23.

Moody filed a motion for reconsideration which was denied on January 2, 2014. On January 23, 2014, Moody filed his notice of appeal from “Judgment after an order granting a summary judgment motion.” Moody chose to proceed on appeal with a clerk’s transcript. He did not request that the summary judgment motion be included in the clerk’s transcript. He also checked the box that he was proceeding without a reporter’s transcript.

II

GRANT OF SUMMARY JUDGMENT MOTION

The instant appeal lacks merit because (1) any claims pertaining to the grant of Lanak’s SLAPP motion are not properly before this court in this appeal; (2) the arguments in Moody’s brief are incoherent and he does not cite to proper legal authority; and (3) he has abandoned any claims he may be raising regarding the grant of the summary judgment motion by providing an inadequate record.

A court may grant summary judgment only if there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (§ 437c, subd. (c).)

“The moving party bears the burden of showing the court that the plaintiff ‘has not established, and cannot reasonably expect to establish, a prima facie case’”

[Citation.] On appeal from the granting of a motion for summary judgment, we examine the record de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party.

[Citation.]” (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.)

Initially, it appears that Moody is raising some sort of claims related to the grant of Lanak’s SLAPP motion. However, as stated, Moody filed another appeal in this court contesting the grant of Lanak’s SLAPP motion which we are resolving in a separate action. The only issue before this court in this appeal is the grant of the summary judgment motion.

Moreover, Moody has provided this court with an incomprehensible brief. “[F]ailure of an appellant in a civil action to articulate any pertinent or intelligible legal argument in an opening brief may, in the discretion of the court, be deemed an abandonment of the appeal justifying dismissal.” (*Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1119.) Moody refers to seeking relief by asking this court to find that the SLAPP motion and the summary judgment motion were improperly granted, but provides no intelligible argument or grounds for such a reversal. He provides almost no facts or argument as to the reasons for the improper summary judgment motion, he refers to parties and other cases of which are unknown to this court, and cites general due

process violations. His claims are incomprehensible. (See *Wright v. City of Los Angeles* (2001) 93 Cal.App.4th 683, 689 [“Generally, asserted grounds for appeal that are unsupported by any citation to authority and that merely complain of error without presenting a coherent legal argument are deemed abandoned and unworthy of discussion. [Citation.]”].) “Consequently, it is appropriate for this court to deem the appeal abandoned and to dismiss it.” (*Berger, supra*, at p. 1120.)

The fact that Moody is representing himself in this appeal does not excuse the inadequacy of his brief. Although defendant is proceeding in propria persona, he must “‘be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.’ . . . Indeed, “‘the in propria persona litigant is held to the same restrictive rules of procedure as an attorney.’” [Citation.]” (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

Moreover, appealed judgments are presumed correct and an appellant has the burden of overcoming this presumption by affirmatively showing error on an adequate record. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.) ““A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” [Citation.] ‘Consequently, [appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [appellant]’ [Citation.]” (*Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187.) “The absence of a record

concerning what actually occurred at [a] hearing precludes a determination that the court abused its discretion.” (*Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259.)

Here, Moody failed to designate that the pertinent records needed to resolve this appeal be included in the clerk’s transcript. He did not have the motion for summary judgment filed by ACIC included in the clerk’s transcript. We cannot say the summary judgment was deficient when we cannot review it. Further, Moody chose to proceed without the reporter’s transcript. In doing so, he acknowledged by signing the Notice of Appeal form that “without a record of the oral proceeding in the trial court, the Court of Appeal will not be able to consider what was said during those proceedings in determining whether the trial court made an error.” This court cannot find that the summary judgment motion should have been denied when there is no support in the record for such a conclusion.

Finally, we note that according to the trial court docket, Moody did not file opposition to the summary judgment motion. Even if we could discern Moody’s claims, they would be waived due to his failure to raise the points in the trial court. (*North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28-29, 32.)

We conclude that “[b]y failing to provide an adequate record, [Moody] cannot meet his burden to show error and we must resolve any challenge to the order against him.” (*Hotels Nevada, LLC v. L.A. Pacific Center, Inc.* (2012) 203 Cal.App.4th 336, 348.) The trial court’s grant of the summary judgment motion is affirmed.

III

DISPOSITION

We affirm the trial court's order granting ACIC's motion for summary judgment.
ACIC, as the prevailing party on appeal, is awarded its costs on appeal.

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McKINSTER
Acting P. J.

We concur:

KING
J.

MILLER
J.